



CITY OF NEWPORT

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September 10, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW Washington, DC 20554

Re: *Ex Parte Presentation, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Streamlining Deployment of Small Cell Infrastructure, WT Docket No. 16-421*

Dear Ms. Dortch:

The South Washington County Telecommunications Commission (the "SWCTC") is a municipal joint powers association consisting of the following St. Paul, Minnesota, suburban cities: Woodbury, Cottage Grove, Newport, St. Paul Park, and Grey Cloud Island. The SWCTC agrees with the *ex parte* letter filed by the National League of Cities and NATOA dated June 21, 2018, and offers the following additional observations and concerns for the above-referenced dockets.

Preemption of Local Government Proven Ineffective

In Minnesota, Small Cell legislation preempting local governments was passed under the presumption that it would allow widespread deployment of small cell wireless facilities to improve wireless networks throughout the state. Since the passage of the Minnesota Small Cell Act, there have not been any permits issued for the construction of small wireless facilities here in Newport. The premise of preempting local authority in order to encourage rapid deployment of Small Cell Wireless Networks is a folly.

FCC Preemption of Local Government is Unlawful

The FCC does not have legal authority to preempt local government. *See* NATOA, Notice of *Ex Parte*, dated June 21, 2018.

Consumer Protection

a. Ensuring Coverage to Rural and Suburban Areas of the Country

The FCC has a duty to protect all wireless consumers in the United States. Yet, there is nothing in any of the FCC's recent orders or rulemaking procedures that seek to ensure that all



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Americans have access to Small Cell Wireless Networks. While it may be more likely that Small Cell Wireless Networks will be prevalent in large metropolitan areas with highly dense populations, it is not likely that rural areas or even suburban areas will be fully covered (if at all). This is evident from the fact that the SWCTC area (suburban Minneapolis) has had very little deployment to date. Even in large metropolitan areas, there is nothing to protect economically disadvantaged areas from being unserved. Rather than preempt local governments, the FCC should empower local governments with rules requiring buildout to entire communities.

b. Rules addressing customer service

The FCC has opened multiple dockets related to Small Cell deployment, yet it has failed to implement even one rule to protect consumers. The roll-out of 5G wireless will give wireless providers access to even more customer data. We encourage the FCC to address consumer protection issues, such as consumer privacy, restrictions on the aggregation and sharing of data, data security, and customer billing. As the federal agency entrusted with protecting consumers in the United States, it is imperative that the FCC seek to address consumer protection to the maximum extent possible under existing laws.

c. Ensuring Emergency Communications

Wireless networks are being increasingly relied upon by citizens in the event of emergencies. As such, it is important to safeguard these citizens by addressing emergency facilities in the event of a natural disaster or act of domestic terrorism. For example, Hurricanes Irma and Harvey caused a great amount of damage and flooding in the Houston and Gulf Coast areas in 2017. Only those areas that required cell tower power supplies to be buried underground were unaffected. Conversely, in those areas where power supplies were left above ground, cellular networks suffered, and emergency services were more difficult to provide. In Minnesota, weather related emergencies occur due to extreme cold, snow, ice, and wind. While wireless providers are often resistant to undergrounding due to increased cost and time requirements, the FCC should seek to protect consumers in times of emergencies. FCC rules should require the undergrounding of certain equipment to ensure adequate wireless communications services during times of weather emergencies.

d. Protection from Excessive Carrier Rates

As dependence on wireless services continues to increase, the FCC should seek to protect consumers, particularly economically disadvantaged consumers, from being charged excessive rates for wireless service. This is particularly true as the industry may consolidate down to only 3 providers.

Anti-Competitive Industry Behavior

We have become aware of some wireless industry companies that are aggressively seeking poles, even if they don't have customers or even plans to construct Small Cell Facilities on the poles in the near future. This behavior eliminates poles from other providers that may have more immediate plans. This causes delays and increased costs to wireless competitors. It also causes additional burdens on property located in the Public Right-of-Way. The FCC has done nothing to ensure this type of anti-competitive behavior is prohibited.

Failure to Conduct basic Due Diligence Before Applying for Permits

We have been made aware that some Wireless Industry applicants for Small Wireless Facilities Permits and authorizations fail to conduct basic due diligence prior to applying. There have been applicants that only did a Google Map search to identify a pole location. The company insisted it needed to construct a new pole in front of a school and on top of a water main. Basic due diligence would have shown that there were multiple existing poles across the street that were eligible for a small cell wireless attachment. It is apparent that local governments have been unfairly blamed for delays where the wireless industry has failed to come in prepared prior to seeking approvals.

Potential Impact on Cable Franchises

The SWCTC has cable franchises with two different cable franchise providers. We are concerned that any action taken by the FCC to preempt local government as it relates to services provided by wireless providers may have unintended consequences on other Public Right-of-Way users, namely, cable providers. FCC rules must be clear that should a wireless provider provide video services over its system, which includes significant fiber and antennas in the public right-of-way, it must enter into a cable franchise with the relevant local government entity. Failure to do so, may negatively impact the SWCTC's existing cable franchise agreements, which contain provisions such as level playing field requirements. In most instances, as is the case with the SWCTC, the cable franchise agreements were entered into before the delivery of cable service over a wireless service (but with significant fiber and antennas in the public right-of-way) was ever understood to be a possibility. Local cable franchising authority must be protected.

Thank you for the opportunity to submit comments on these issues.

Sincerely,



Dan Lund
Mayor of Newport Minnesota